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नई दिल्ली, मई 21—मई 27, 2006, शनिवार/वैशाख 31—ज्येष्ठ 6, 1928

No. 14]

NEW DELHI, MAY 21—MAY 27, 2006, SATURDAY/VAISAKHA 31—JYAISTHA 6, 1928

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)  
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 12 मई, 2006

आ. अ. 47—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13-क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग पंजाब सरकार के परामर्श से एतद्वारा श्री जी.एस. चौमा, आई.ए.एस. के स्थान पर श्री सुन्दर कृष्णा, आई.ए.एस. (पीबी : 1977) को उनके कार्यभार ग्रहण करने की तारीख से आगामी आदेशों तक के लिए पंजाब राज्य के मुख्य निर्वाचन अधिकारी के रूप में नामित करता है।

2. श्री कृष्णा पंजाब सरकार के अधीन सभी पदभार या किसी कार्य के पदभारों को तत्काल सौंप देंगे या धारण करना समाप्त कर देंगे, जो कि वे ऐसा पदभार ग्रहण करने से पहले धारण कर रहे थे।

3. श्री कृष्णा, मुख्य निर्वाचन अधिकारी, पंजाब के रूप में कार्य करते हुए पंजाब सरकार के अधीन किसी भी प्रकार का कोई अतिरिक्त कार्यभार ग्रहण नहीं करेंगे सिवाय इसके कि उनको राज्य सचिवालय में निर्वाचन विभाग के प्रभारी, सरकार का सचिव पदाभिहित किया जायेगा।

[सं. 154/पीबी/2005-का. प्रशासन]

आदेश से,

स्टेन्डहोप युहलुंग, अवसर सचिव

**ELECTION COMMISSION OF INDIA**

New Delhi, the 12th May, 2006

O. N. 47.—In exercise of the powers conferred by sub-section (1) of Section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India in consultation with the Government of Punjab hereby nominates Shri Sundaram Krishna, IAS (PB : 1977) as the Chief Electoral Officer for the State of Punjab with effect from the date he takes over charge and until further orders *vice* Shri G. S. Cheema, IAS.

2. Shri Krishna shall cease to hold and hand over forthwith the charge of all or any charges of work under the Government of Punjab, which he may be holding before such assumption of office.

3. Shri Krishna while functioning as the Chief Electoral Officer, Punjab shall not hold any additional charge whatsoever under the Government of Punjab except that he should be designated Secretary to the Government in charge of Election Department in the State Secretariat.

[No. 154/PB/2005-P. Admn.]

By Order,

STANDHOPE YUHLUNG, Under Secy.

नई दिल्ली, 19 मई, 2006

आ. अ. 48.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 2004 की निर्वाचन अर्जी संख्या 10 में, आन्ध्र प्रदेश उच्च न्यायालय, हैदराबाद का निर्णय तारीख 9 दिसम्बर, 2005 को इसके द्वारा यहां प्रकाशित करता है।

(निर्णय इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[संख्या 82/आ.प्र.-लो.स./ (10/2004)/2006]

आदेश से,

तपस कुमार, सचिव

New Delhi, the 19th May, 2006

O. N. 48.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement/Order of the High Court of Andhra Pradesh, Hyderabad, dated 9-12-2005 in Election Petition No. 10 of 2004.

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD**

Tuesday, the Twentieth day of September Two Thousand and Five

Present

**THE HON'BLE MR. JUSTICE C. Y. SOMAYAJULU**  
ELECTION PETITION NO. : 10 OF 2004

**BETWEEN:**

Mohd Chand Pasha, S/o Vali Ahmed,  
R/o 5-2-82, Bellampally, Adilabad District

.....PETITIONER

AND

1. T. Madhusudhan Reddy,  
R/o H. No. 4-3-217, Hameedpura,  
Adhilabad, Adilabad District
2. The Returning Officer, 35-Adilabad,  
Parliamentary Constituency, Adilabad

.....RESPONDENT(S)

Petition under Sections 80, 81, 100 (1), 33, 36 (2) (4) (5) (6) of Representation of Peoples Act, 1951, praying that in the circumstances stated in the affidavit filed in the Petition, the High Court will be pleased to (a) to declare the proceedings of the 2nd respondent proceedings No. C5/919/2004, dated 02/04/2004, rejecting the nomination of the petitioner from 35-Adilabad Parliamentary Constituency as illegal, improper and consequently declare the declaration of the 1st respondent as returned candidate to be null and void; (b) costs of the petition be awarded to the petitioner herein, (c) and to grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.

The petition coming on for hearing upon persuing the Petition and the affidavit filed in support thereof and upon hearing the argument of MR. SREENIVASA SARMA, Advocate for the Petitioner and of MR. M. RAJENDER REDDY, Advocate for the Respondent No. 1 and for the Respondent No. 2 not appearing in person or by Advocate.

The Court made the following ORDER :

(THE HONOURABLE SR! JUSTICE C. Y. SOMAYAJULU)

#### ELECTION PETITION NO. 10 OF 2004

#### ORDER:

Questioning the rejection of his nomination for the 35-Adilabad Parliamentary Constituency, petitioner filed this petition.

2. The case of the petitioner in brief is that in pursuance of the notification issued by the Election Commission of India, he filed his nomination for the 35-Adilabad Parliamentary Constituency on 29-03-2004, at about 1-45 p.m. before the Returning Officer (second respondent) by depositing Rs. 10,000/- as security deposit, and took the oath as required, and that the second respondent through his memo dated 29-03-2004, directed him to produce the proforma affidavit in Form No. 26 postively 'before 11-00 a.m.' on 02-04-2004 and though he sent his representative, along with his affidavit in Form No. 26, with a request to be present before the second respondent 'at 11 a.m.' on 2-4-2004, though his representative entered the chambers of the 2nd respondent when his name at Sl. No. 10 was called at the time of scrutiny of the nominations, and requested him to receive his affidavit in Form No. 26, second respondent while refusing to receive the same on the ground that it was presented to him at 11-15 a.m. on 02-04-2004 rejected his nomination, and since his request for furnishing a copy of the order of rejection of his nomination was ignored he, after sending a complaint to the Chief Election Officer, Hyderabad on 04-04-2004 about the second respondent not furnishing a copy of the order rejecting his nomination, filed W.P. No. 7116 of 2004 questioning the rejection of his nomination by the 2nd respondent, but the same was dismissed as not maintainable at the stage of admission on 15-04-2004, and that the second respondent furnished a copy of the order rejecting his nomination later and after election, second respondent declared the first respondent as duly elected to the 35-Adilabad Parliamentary Constituency and since his nomination is improperly rejected the election of the 1st respondent is liable to be set aside.

3. First respondent filed his written statement *inter alia* contending that inasmuch as every contesting candidate has to give an affidavit, furnishing information mentioned in Section 33-A of the Representation of the People Act, 1951 (in short "the Act"), and since petitioner, who failed to give such affidavit with his nomination, was absent by 11-00 a.m. on 02-04-2004 i.e., the time and date of scrutiny of nominations, and since K. Sathaiyah, said to be a representative of the petitioner entered the chambers of second respondent, without any letter of authority from the petitioner, at 11-15 a.m. and intended to present some papers to the second respondent, on an objection raised by Sri Mothe Barik Rao one of the candidates that filed a nomination that no papers can be received after expiry of the time prescribed, second respondent passed the order rejecting the nomination of the petitioner, and since petitioner did not make all the candidates that contested the election parties to the petition, petitioner is not entitled to any relief.

4. Second respondent filed his written statement alleging *inter alia* that inasmuch as the petitioner along with his nomination failed to file his affidavit in the prescribed proforma as required by Section 33-A of the Act, as per the guidelines of the Election Commission of India contained in para 20.1 of Chapter V of Hand Book for Returning Officers, served a memo on the petitioner directing him to furnish the affidavit in Form No. 26 'before 11-00 a.m.' on 02-04-2004, and that on 02-04-2004 a person by name K. Sathayya claiming himself to be the representative of the petitioner, entered his chambers at 11-15 a.m. along with the affidavit of the petitioner in Form No. 26 and requested him to receive the same, but as Sri Mothe Barik Rao, one of the candidates, raised an objection for its receipt, as the time allowed for its filing had expired, he, after drawing the attention of Sri K. Sathayya to the memos that were issued to the petitioner, did not receive the affidavit of the petitioner in Form No. 26 and rejected his nomination in the presence of the persons that filed the nominations and/or their representatives and that he after obtaining the clarification from the Chief Electoral Officer, Hyderabad, on the request of the petitioner for a certified copy of the order of rejection furnished a certified copy of the order of rejection of the nomination of the petitioner to the petitioner on 12-04-2004.

5. Basing on the above pleadings, the following issues are settled for trial :

- (1) Whether rejection of nomination of the petitioner for 35-Adilabad Parliamentary Constituency is improper and illegal as contended by the petitioner ?
- (2) To what relief ?

6. In support of his case, petitioner examined himself as P.W. 1 and another witness as P.W. 2 and marked Exs. A-1 to A-14. In support of his case, the first respondent examined himself as R.W. 1 but did not adduce any documentary evidence. In support of his case, second respondent examined himself as R.W. 2 but did not adduce any documentary evidence.

7. Issue No. 1 :

The evidence of the petitioner as P.W. 1, is that when he filed his nomination, after making the security deposit of Rs. 10,000/- under Ex. A-3 receipt, second respondent issued Ex. A-1 receipt and administered oath and issued Ex. A-4 and served Exs. A-5 and A-6 memos on him asking him to submit his affidavit in the prescribed Form No. 26 positively before 11-00 a.m. on 02-04-2004, explaining the consequences for not filing the same and that on 02-4-2004 he sent his agent Sammayya along with his affidavit in Form No. 26 to the office of the second respondent to represent him at the time of scrutiny, and that the said Sammaiah informed him in the evening that though he reached the office of the second respondent before 11-00 a.m., his nomination was rejected on the ground that he (Sammayya) entered the chambers of the second respondent at 11-15 a.m. though he (Sammayya) in fact was present there even before 11-00 a.m., and as the order of rejection of his nomination was not furnished either to him or to Sammayya, he sent a representation through the spokesman of his party under the original of Ex. A-7 dated 04-04-2004 and followed it by another representation on 11-04-2004 under the original of Ex. A-8 and another representation dated 12-04-2004 under the original of Ex. A-9 and since no copy was furnished to him in spite of those representations, he filed W.P.No. 7166 of 2004, which was dismissed under Ex. A-11 order on 15-04-2004 with a direction to file an election petition, and thereafter only he received Ex. A-12 order of rejection from the second respondent in which his representative Sammayya wrongly described as Sattayya. During cross-examination on behalf of the first respondent he stated that all the facts mentioned in Ex. A-7 complaint given by Satyanarayana on his behalf are correct and that Ex. A-12 order of rejection was furnished to him free of cost, and that he did not file Form No. 26 along with his nomination as a criminal case is pending against him and intended to file the same on the date of scrutiny i.e., 02-4-2004 and denied the suggestion that he did not file his affidavit before 11-00 a.m. on 02-04-2004 as a criminal case is pending against him. During cross-examination for second respondent he stated that he went personally to file his nomination and denied the suggestion that he, in the affidavit filed by him in support of W.P.No. 7116 of 2004, alleged that he went to the second respondent personally to give his affidavit in Form No. 26, and that his affidavit in Form No. 26-1 was not presented before 11-00 a.m. on 02-04-2004 as per the memo given to him by the second respondent, and that neither he nor his representative were present in the office of the second respondent at 11-00 a.m. on 02-04-2004 and that his representative went into the office of the second respondent only at 11-15 a.m. on 02-04-2004.

8. The evidence of P.W. 2 is that petitioner nominated him as his election agent, and that on 02-04-2004 he went to the office of the second respondent before 11-00 a.m. along with the affidavit of the petitioner, and that the second respondent was not in the office at that time, and after his arrival to his office at 11 a.m. second respondent announced that he would scrutinize the nominations one after the other and when he asked the second respondent to scrutinize the papers brought by him, second respondent stated that he would go by the serial number allotted to each candidate, and would check the papers then, and though he signed in the register in the office of the second respondent as Sammayya his name was wrongly mentioned as K. Sattayya in Ex. A-12 order and that he was waiting outside the office of the second respondent, thinking that he would call him when second respondent reaches the serial number of the petitioner and entered his chambers along with the affidavit of the petitioner, when second respondent called the name of petitioner and that he was told that as the time for scrutiny was over he cannot take those papers and when he informed the second respondent that he has been waiting outside his chambers for his turn as he was informed that the papers would be scrutinized when the name of the petitioner is called, and that it is unfair on his part to say that he was not present before the time for scrutiny, second respondent asked him to go away as the nomination of the petitioner was rejected for his failure to submit the papers within time, and when he asked for a copy of the order of rejection of the nomination of the petitioner, he was informed that it would be sent later. During cross-examination for the first respondent he stated that he has acquaintance with the petitioner since 10 years as a party worker and that R. V. K. Satyanarayana, scribe of Ex. A-7, is the State Secretary of his party, and that he did not make a complaint to the Chief Election Officer or anybody about the rejection of the nomination of the petitioner; and that he does not know if any criminal cases are pending against the petitioner and that he was not present at the time of scrutiny of the nominations of the other candidates and denied the suggestion that only because he did not give the affidavit of the petitioner to the second respondent before 11-00 a.m. was the nomination of the petitioner rejected. During cross-examination for the second respondent he denied the suggestion that he went to the office of the second respondent at 11-15 a.m.

9. The evidence of R. W. 1 i.e., first respondent, is that he filed his nomination on 29-03-2004 and as he was asked to be present at the office of the second respondent by 11-00 a.m. on 02-04-2004 for scrutiny of the nominations he attended the office of the second respondent on 02-04-2004 at 10-45 a.m. along with some of his supporters; and that some other candidates along with their supporters also were present at the office of the second respondent at that time, and that second respondent took up the scrutiny of nominations at 11.00 a. m. and called the names of the candidates one by one and declared, in their presence, the decision either accepting or rejecting the nominations of the candidates, and that nominations of all other candidates except that of the petitioner were declared valid, and also gave out the reasons for rejection of the nomination of the petitioner as his failure to file requisite affidavit in Form No. 26, in spite of notice, and that after completion of the scrutiny of nominations at 11-10 a. m., a person claiming to be the representative of the petitioner entered the chambers of the 2nd respondent at 11-15 a. m. stating that he brought the affidavit of the petitioner, and that second respondent informed him that as scrutiny was over as the nomination of the petitioners was rejected, and as that person could not produce the letter of authority from the petitioner when asked by the second respondent, and since Mote Barik Rao raised an objection for receipt of papers from that person, as the time fixed for their receipt had already elapsed, second respondent did not receive those papers and that in W. P. No. 7116 of 2004 filed by him petitioner alleged that he himself was present before that Returning Officer along with his affidavit in Form No. 26. During cross-examination for the petitioner he stated that about 10 to 12 persons were present in the office of the second respondent at the time of scrutiny, and though the second respondent did not make note of their names, a clerk in his noted the names of those persons and obtained their signatures wherein K. Sattayya, representative of the petitioner, also signed and that to his remembrance the scrutiny was over by 11-10 a. m. and as nobody raised objection during the scrutiny, no discussion about the validity of the nominations arose and denied the suggestions that he did not mention in his counter that the scrutiny was over by 11-10 a. m., and that K. Sammayya, representative of the petitioner, was present in the office of the second respondent at 11-00 a. m.

10. The evidence of the second respondent as R. W. 2 is that since the petitioner did not file his affidavit in Form No. 26 along with the nomination, he gave Ex. A-5 memo asking him to file the affidavit in form No. 26 before 11-00 a. m. on 02-04-2004, but the petitioner was not present before 11-00 a. m. on 02-04-2004 by the time he took up scrutiny of the nominations at 11-00 a. m. and so he rejected the nomination of the petitioner and when some person, on behalf of the petitioner, came with the affidavit of the petitioner in Form No. 26 he informed him about the nomination of the petitioner being rejected, and when he enquired from him if he brought authorization from the petitioner, he failed to show any authorization letter, and when the petitioner asked for a copy of order of rejection of his nomination, he, after obtaining instructions from the Election Commission, furnished Ex. A-12 order of rejection to him. During cross-examination for petitioner, he stated that he was present in the office at 10 a.m. on 02-04-2004, but did not take the attendance of the candidates that were present, but asked all the persons present to come into his chambers, and as he made a pre-scrutiny it did not take much time for the scrutiny of the nominations in the presence of the candidates or their representatives, and that he made a note if the nomination is accepted or not on all the eight nominations filed before him, and admitted that he did not mention in Ex. A-12 order that the representative of the petitioner failed to produce the letter of authorization from the petitioner, and that he not aware if the petitioner sent a representation to the Chief Election Officer about his failure to furnish a copy of order of rejection, and that he wrote the order of rejection on the nomination of the petitioner and since he fixed the time for scrutiny, he took up the scrutiny of the nominations at that time and that it did not take long for him to write the order of rejection and denied the suggestion that he illegally and improperly rejected the nomination of the petitioner.

11. The contention of the learned counsel for the petitioner is that since the evidence of P.W.2 clearly shows that he was present before 11-00 a.m. on 02-04-2004 along with the affidavit of the petitioner in Form No. 26, 2nd respondent rejecting the nomination of the petitioner on the ground that he did not file his affidavit in Form No. 26 is unsustainable, more so because the original order of rejection is not produced by the 2nd respondent. Relying on **Jagannath Rmachandra Nannekar V. Genu Govind Kadam and others<sup>1</sup>** and **Anil Baluni V. Surendra Singh Negi<sup>2</sup>** he contended that since the nomination of the petitioner was rejected without affording an opportunity of being heard the same is liable to be set aside on that ground alone.

12. The contention of the learned counsel for the first respondent is that in view of Section 33A and Section 33B of the Act, incorporated into the Act by virtue of the ratio in **Union of India V. Association for Democratic Reforms and another<sup>3</sup>** and since in the notification issued by the Election Commission of India through its order dated 27-03-2003 it is made mandatory for a candidate to furnish his affidavit in Form No. 26, in spite of the apex court striking down Section 33-B of the Act in **People's Union for Civil Liberties and another V. Union of India<sup>4</sup>**, as in that decision the validity of Section 33-A is upheld, the nomination of the petitioner unaccompanied by his affidavit in Form No. 26 is but an incomplete one and

<sup>1</sup> AIR, 1989 Supreme Court 475

<sup>2</sup> \*2005) 5 Supreme Court Cases 793

<sup>3</sup> (200) 5 Supreme Court Cases 294

<sup>4</sup> (2003) 4 Supreme Court Cases 399

so the same cannot be said to be a valid nomination and since last date for receipt of nomination as per the notification is 31-03-2004, second respondent granting time to the petitioner to produce his affidavit in Form No. 26 'before 11-00 a.m.' on 02-04-2004 should be taken as a concession granted to the petitioner who, as per the opportunity granted to him, ought to have produced his affidavit in Form No. 26 'before 11-00 a.m.' on 02-04-2004, and since he admittedly failed to produce the same 'before 11-00 a.m.' on 02-04-2004, his nomination was rightly rejected by the 2nd respondent.

13. In the order dated 27-03-2003 issued by the Election Commission, relied on by the learned counsel for the petitioner, its earlier order dated 28-6-2002 issued by it in exercise of the powers conferred on it by Article 324 of the Constitution, for implementation of the directions issued by the apex court, are also incorporated. They read

- (1) Every candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State for Legislative Council of a State having such a council, shall furnish full and complete information in regard to the matters specified by the Hon'ble Supreme Court and quoted in paras 13 and 14 above, in an affidavit, the format whereof is annexed hereto as Annexure-1 to this order.
- (2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned.
- (3) Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon'ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the returning officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.
- (4) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective returning officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.
- (5) If any rival candidate furnishes information to be contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

So, it is clear that filing of affidavit in Form No. 26 is mandatory and failure to file it would entail rejection of the nomination at the time of scrutiny. So if at the time of scrutiny, the affidavit of the petitioner in Form No. 26 is not before the second respondent, he has no option but to reject it. In view of the above, the question is whether petitioner furnished his affidavit in Form No. 26 'before 11-00 a.m.' on 02-04-2004 or not.

14. Even according to the allegations in the petition and evidence adduced by the petitioner also, he (petitioner) was not present in the office of the second respondent on 02-04-2004. As per the evidence of P.W.2, who is said to have been deputed by the petitioner, he reached the office of the second respondent before 11-00 a.m. but the second respondent was not present in the office at that time and came to the office only at 11-00 a.m. and stated that he would check the nomination papers one after the other in serial number. But there is no such averment in the election petition that the representative of the petitioner was present before the 2nd respondent "before 11-00 a.m." as para (iii) of the election petition reads.

"The petitioner submit that as directed by the 2nd respondent the petitioner herein was present before the 2nd respondent on 02-04-2004 at 11-00 a.m. through his representative at that time all other representatives of the respective candidates who submitted their nominations were also present. Then the 2nd respondent has taken up the scrutiny at 11-00 a.m. sharp by calling all the candidates one by one." (Underlining mine)

Therefore, the evidence of P.W.2 that he was present "before 11-00 a.m." in the office of the second respondent and that second respondent was not present in the office and came at 11-00 a.m. cannot be accepted or believed because there is no foundation in the pleading for such an important plea, and because, as rightly contended by the learned counsel for the first respondent, as per the concession given to the petitioner by the 2nd respondent he has to supply the omissions in his nomination 'before 11-00 a.m.', because the nomination of the petitioner should be free from defect when the scrutiny is taken up at 11 a.m. In fact the suggestion put to R.W.1 during cross-examination on behalf of the petitioner also shows that P.W.2 went to the office of second respondent 'at 11 a.m.' but not 'before 11 a.m.'. For that reason also the evidence of P.W.2 that he went to the office of the second respondent 'before 11 a.m.' cannot be accepted.

15. In Jagannath Ramchandra Nuneekar (1st supra), relied on by the learned counsel for the petitioner, a candidate seeking election from a constituency, other than the one in which he was registered as a voter, applied to the Electoral Registration Officer of the Assembly Constituency in which he was registered as a voter for a certified copy of the relevant

entry in the electoral roll containing his name, for the purpose of producing it before the Returning Officer along with his nomination paper under S.33(5) of the Act and accordingly a certified copy was prepared by the officer concerned. The Returning Officer, who commenced the scrutiny of the nomination on the day fixed for scrutiny at 11-00 a.m. rejected his nomination on the ground that the certified copy of the relevant entry in the electoral roll produced by him cannot be treated as a certified copy of the electoral roll which was in force at that time, as he on his own information came to know that there was a revision in 1985 and held that the certified copy produced before him was from an electoral roll which had become defunct, even without affording an opportunity to the candidate to show that the copy produced by him is the correct one and can be acted upon. In that case the candidate produced another certified copy at 1 p.m. on the next day, even before list of nominations is published on the notice board. The said decision has no application to the facts of this case because it relates to rejection of the nomination of a candidate for non-compliance with provisions of Section 33(5) of the Act which reads

“Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.”

Section 36(5) of the Act reads

“The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of Section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case (an objection is raised by the returning officer or is made by any other person) the candidate concerned may be allowed time to rebut it not later than the next date but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.”

Since the facts in this case are entirely different from the facts of that case, the same is no help in deciding this petition more so because rejection of the nomination can be *suo motu*, or on an objection raised by the other party, as per Section 36 of the Act. When a nomination is incomplete, and is not accompanied by the relevant and necessary documents and when an opportunity to supply the omissions found in his nomination was given to the petitioner fixing the time and date as ‘before the commencement of the scrutiny on 2-4-2004 at 11 a.m.’ petitioner, if he wanted to have the benefit of the concession given to him, ought to have produced the Form No. 26 certificate before 11-00 a.m. on 02-04-2004, because even if he were to be produced at 11-00 a.m. it would be beyond the time fixed and any candidate can oppose the validity of the nomination, as it is incomplete for not being accompanied by the affidavit in Form No. 26. Since it is not even the case of the petitioner, in the petition, that he supplied the omissions by producing the affidavit in form No. 26 ‘before 11-00 a.m.’ on 02-04-2004, even assuming that P.W.2 was present in the office the 2nd respondent ‘at 11-00 a.m.’ rejection of the nomination of the petitioner by the second respondent as being invalid cannot be called in question, that too on the ground of lack of opportunity of being heard, because question of affording an opportunity being heard can be given in respect of matters which are verifiable and are to be established. To give an example if the nomination does not contain the signature of the candidate or the signature of requisite number of proposers, need to give an opportunity of being heard to the candidate does not arise because he cannot supply the omission thereof. Similar is the case of a nomination filed without affidavit in Form No. 26, which is liable for rejection *in limine*, even without affording an opportunity of being heard. Therefore rejection of the nomination of the petitioner by the second respondent cannot be said to be improper or illegal. The issue is answered accordingly.

16. I am not able to accept the contention of the learned counsel for the petitioner that inasmuch as the original order of rejection of the nomination is not produced by the 2nd respondent petitioner’s contention has to be accepted. If the petitioner felt that the original order of rejection of his nomination would have helped his case he should have taken steps to summon the same, as the burden of proof to prove his case is on him, but not on the 2nd respondent. So it is not necessary for the 2nd respondent to produce the original order of rejection into court and so no inference can be drawn against the respondents due to its non-production.

17. In view of my above finding question whether the petition is bad for non-joinder of other contesting parties is bad or not, need not be decided.

18. Issue No.2:

In the result, the petition is dismissed with costs.

1459 GI/06-3

## Memorandum of Costs

## Respondents ( ) Costs

	Rs. Ps.
Stamp of Vakalatnama Advocate's Fees	5-00
FC not filed	Nil
Translation and Printing Charges	Nil
<b>Total</b>	<b>5-00</b>

To be paid by the petitioner to the respondent.

Sd/

BH. SADASIWA SARMA, Joint Registrar

[No. 82/AP-HP/(10/2004)/2006]

By Order,

TAPAS KUMAR, Secy.

नई दिल्ली, 26 अप्रैल, 2006

आ. अ. 49.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 22 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एवं मणिपुर सरकार के परामर्श से निर्वाचन आयोग एतद्वारा समय-समय पर संशोधित अपनी दिनांक 24 दिसंबर, 1997 की अधिसूचना सं. 434/मणिपुर/97(2) में, मणिपुर राज्य के संसदीय निर्वाचन क्षेत्रों के रिटर्निंग ऑफिसरों की सहायता के लिए सहायक रिटर्निंग ऑफिसरों की नियुक्ति के संबंध में निम्न संशोधन करता है।

उपरोक्त अधिसूचना से संलग्न सारणी में, 1-आंतरिक मणिपुर संसदीय निर्वाचन क्षेत्र के सामने, विद्यमान प्रविष्टियों के बाद निम्न प्रविष्टियाँ जोड़ी जाएंगी :-

## सारणी

संसदीय निर्वाचन क्षेत्र का नाम व क्रम संख्या	सहायक रिटर्निंग ऑफिसर
1-आन्तरिक मणिपुर	12-उपप्रभागीय अधिकारी, नामबोल बिशनुपुर
संसदीय निर्वाचन क्षेत्र	13-उपप्रभागीय अधिकारी, मोईरंग, बिशनुपुर
	14-उपप्रभागीय अधिकारी, बिशनुपुर, बिशनुपुर
	15-उपप्रभागीय अधिकारी, लिलोंग, थोउबाल
	16-उपप्रभागीय अधिकारी, थोउबाल, थोउबाल
	17-उपप्रभागीय अधिकारी, कार्काचिंग, थोउबाल

[सं. 434/मणिपुर/2006(2)]

आदेश से,

कै. अजय कुमार, सचिव

New Delhi, the 26th April, 2006

O. N. 49.—In exercise of the powers conferred by Sub-section (1) of Section 22 of the Representation of the People Act, 1951 (43 of 1951), and in consultation with the Government of Manipur the Election Commission hereby makes the following amendment in its Notification No. 434/MR/97(2) dated 24th December, 1997, amended from time to time relating to appointment of Assistant Returning Officers to assist the Returning Officers for Parliamentary Constituencies in the State of Manipur.



In the table appended to the said Notification the following entries shall be added after the existing entries against I-Inner Manipur Parliamentary Constituency:—

TABLE

Sl. No. AND NAME OF PARLIAMENTARY CONSTITUENCY	ASSISTANT RETURNING OFFICERS
1	2
I-Inner Manipur Parliamentary Constituency	12. Sub-Divisional Officer, Nambol, Bishnupur
	13. Sub-Divisional Officer, Moirang, Bishnupur
	14. Sub-Divisional Officer, Bishnupur, Bishnupur
	15. Sub-Divisional Officer, Lilong, Thoubal.
	16. Sub-Divisional Officer, Thoubal., Thoubal.
	17. Sub-Divisional Officer, Kakching, Thoubal.

[No. 434/MR/2006(2)]

By Order,

K. AJAYA KUMAR, Secy.